

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY LA PAZ

UNCLAS STATE 132947

E.O. 11652: N/A

TAGS:PFOR, ENRG, EIND, BL

SUBJECT: GULF OIL

REF: STATE 124030

1. PARA 5 REFTEL REPORTED AMBASSADOR CAPRILES' INQUIRY ON POSSIBILITY OF TRANSMITTING BOLIVIAN COURT ORDER TO AN APPROPRIATE U.S. COURT THROUGH DIPLOMATIC CHANNELS. DEPARTMENT IS PASSING THE FOLLOWING INFORMATION TO CAPRILES:
2. U.S. LAW PROVIDES FOR ASSISTANCE TO FOREIGN COURTS IN OBTAINING TESTIMONY FROM WITNESSES AND CERTAIN OTHER TYPES OF INFORMATION WHEN REQUIRED FOR A PROCEEDING IN A FOREIGN COURT. THE VEHICLE FOR OBTAINING THE INFORMATION IS "LETTERS ROGATORY" WHICH IS REALLY A DEPOSITION, OR WRITTEN SET OF QUESTIONS TO BE ASKED OF A WITNESS. THIS IS A VERY COMMON LEGAL PROCEEDING AND MOST COUNTRIES PROVIDE FOR THE EQUIVALENT. BOLIVIA SHOULD HAVE SPECIFIC GUIDELINES FOR ITS COURTS TO FOLLOW IN PRESENTING "LETTERS ROGATORY" TO THE COURTS OF OTHER COUNTRIES.
3. NORMAL PROCEDURE IS FOR THE FOREIGN COURT TO PREPARE UNCLASSIFIED

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THE QUESTIONS AND TRANSMIT THEM THROUGH ITS JUSTICE MINISTRY AND/OR FOREIGN MINISTRY TO ITS EMBASSY IN WASHINGTON, WHICH SENDS THE QUESTIONS TO THE DEPARTMENT VIA DIPLOMATIC NOTE.

THE DEPARTMENT TRANSMITS THE QUESTIONS TO THE JUSTICE DEPARTMENT'S FOREIGN LITIGATION UNIT, WHICH SENDS THEM ON TO THE U.S. ATTORNEY WITH JURISDICTION OVER THE WITNESS. THE U.S. ATTORNEY CAN ASK THE QUESTIONS HIMSELF IF THE WITNESS IS WILLING, OR DO SO BY SUBPOENA AND JUDICIAL PROCEEDING IF THE WITNESS RESISTS. THE WITNESS CAN, OF COURSE DEFEND ON PROCEDURAL GROUNDS AGAINST BEING FORCED TO TESTIFY.

4. OUR STATUTE IS VERY PERMISSIVE AND HAS FEW PROCEDURAL REQUIREMENTS. GOB COULD, FOR EXAMPLE, HAVE BOLIVIAN COURT DOCUMENTS TRANSMITTED DIRECTLY TO BOLIVIAN CONSUL IN WASHINGTON, WHO COULD ENGAGE US LAWYER TO DELIVER THEM DIRECTLY TO APPROPRIATE US COURT, WITHOUT ANY US GOVERNMENT INVOLVEMENT. WE HAVE INDICATED TO CAPRILES INFORMALLY THAT THIS APPROACH WOULD BE PREFERABLE. KISSINGER

UNCLASSIFIED

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